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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,835	10/30/2003	Merrie Martin	88265-14036	7200
28765	7590	04/18/2006		
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			EXAMINER TRAN LIEN, THUY	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/695,835	MARTIN, MERRIE	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 February 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Claim 26 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 26 submitted with the amendment of 2/3/06 is not supported by the original disclosure. While page 7 discloses dough may be baked in pan of double the size, there is no disclosure that the dough expands to double its size.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drantch et al. in view of the book " Complete Cake Decorating"

Drantch et al disclose a dough and a method of making fresh baked product from the dough. The dough include brownie doughs. The dough is placed in a sealed container. The dough is prepared into finished baked goods by simple addition to a suitable baking container or pan and baking to form a finished baked good. The dough comprises 25-45% flour, 0-45% sugar, 10-35% fat, and 5-15% moisture. Other ingredients including egg, nonfat dry milk solids, flavoring, preservative and humectant can be added. The fat includes fractionated fat and other fat such as margarine. The dough can contain leavening agent; however, some cookie dough products do not require leavene. The dough is baked at temperature range of 160-218.3 degree C for a time in the range of 10-40 minutes. (see col. 6 lines 56-63, columns 7-9 col. 11 lines 1-25)

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With respect to claim 1, Drantch et al do not disclose providing the dough in the form of a bar and that the bar is placed in pan so that there is a margin provided between the bar and the walls. They do not disclose the shape and sizes as claimed in claims 2-3.

The cookbook teaches to place the dough having a margin that is distant from the wall of the pan.

The dough of Drantch et al does not require any manipulation before baking. Since it is a dough, it is obvious that it has sufficient firmness to retain the shape without breaking. It would have been obvious to one skilled in the art to form the dough into any shape depending on the type of product intended to be made from the dough. For example, brownies are usually formed into bar shape; thus, it would have been obvious to shape the brownie dough into bar shape, or it would have been obvious to shape the dough as oval, round, or any shape to make the dough more attractive and appealing. It would also have been obvious to make dough in any thickness, width and length depending on the size wanted for the final product. This would have been an obvious matter of preference. The placing of the dough so that it does not touch the walls of the baking pan is known in the art as shown by the cookbook. It would have been obvious to one skilled in the art to form the dough in the size that will not touch the walls so that the dough is not overflow to the wall and that the size is of the end product is the size of the pan to give a rounded or rectangular or square etc.. configuration. This will give a more attractive appearance. Determining the size of the dough so that it will give the

most optimum appearance to the product would have been well within the routine experimentation of one skilled in the art.

Claims 4-18, 24-25,26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drantch et al in view of the cookbook "cake Decorating" as applied to claims 1-3 above, and further in view of Banks.

Drantch et al do not disclose adding emulsifier, cold swelling starch, the dimension of the baking pan and the size of the chocolate chip, the size of the dough margin from the wall and the dough doubling in size.

Banks teaches adding a cold water swelling granular starch into cookie dough in an amount of about 2-20%. The starch reduces cookie spread and provides a shelf-stable, more moist and tender texture in cookies. Banks also teaches adding emulsifier to the dough. (see col. 2 lines 35-47, col. 8 lines 62-64).

Drantch et al disclose using margarine which is the same type of fat disclosed. Thus it obvious the fat has the same solid fat index as claimed. It would have been obvious to one skilled in the art to add a cold swelling starch in the amount taught by Banks to obtain the benefits disclosed by Banks. It would also have been obvious to add an emulsifier because it is a known additive for sweet dough product as disclosed by Banks. Adding additive for its art recognized function would have been obvious. It would have been obvious to use pan of any varying size depending on the size wanted for the final product. It would have been obvious to use chocolate chip of any size depending on the taste wanted; this would have been a matter of preference. It would have been obvious to one skilled in the art to form the dough into any shape depending

on the type of product intended to be made from the dough. For example, brownies are usually formed into bar shape; thus, it would have been obvious to shape the brownie dough into bar shape, or it would have been obvious to shape the dough as oval, round, or any shape to make the dough more attractive and appealing. It would also have been obvious to make dough in any thickness, width and length depending on the size wanted for the final product. This would have been an obvious matter of preference. The dimension of the dough margin from the wall depends on the size of the dough and the size and configuration wanted for the final product. It would have been within the skill of one in the art to place the dough in certain distance from the margin so that a nice configuration is obtained without the dough overflowing to the wall. The proper dimension can readily be determined through routine experimentation. As to the dough doubling in size, this depends on many factors such as the amount of leavening, the degree of mixing, the amount of ingredients used... ; it would have been obvious to one skilled in the art to determine the proper degree of expansion to give the most optimum product.

Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drantch et al in view of Banks et al and the cookbook as applied to claims 1-18,24-25 above, and further in view of Blaschke et al (WO 01/06858),

Drantch et al do not disclose dough having the features cited in claims 20-23. Blaschke et al disclose a ready-to-use bakery dough which is preserved in the refrigerator. The dough is firm during storage but spread well during baking. The dough can have different configurations and materials as recited on page 8 lines 1-11.

It would have been obvious to one skilled in the art to make dough having different dough composite, decoration and filling as taught by Blaschke et al to make baked product having different taste, texture, flavor and look.

In the response filed 2/3/06, applicant argues Drantch et al fails to teach a size to provide a margin between the dough bar and the walls and dough bars that are sized to flow to fill the bottom of a baking pan. The dough in Drantch et al is used to prepare cookies, brownies, blondie etc.. It is readily apparent to one skilled in the art that the end products from the dough are not the same size of the original dough; the dough expands due to the leavening agent and other components in the dough. Drantch et al disclose on column 11 lines 34-35 that the finished baked good are further characterized by being expanded or leavening. Thus, it is obviously inherent that the dough flows out. The extension of the flow depends on many factors such as the size of the dough, the amount of leavening, the extent of mixing, texture, etc.. Such parameters are within the routine experimentation of one in the art. As to the dough not touching the walls of the pan, such concept is known in the art as shown by the cookbook. It would have been obvious to one skilled in the art to place the dough so that it is not abutted right against the wall of the pan; this will give the dough room to expand and form nice configuration in conform with the shape of the pan. The determination of size of the dough and its placement in the pan are result-effect variable which can readily be determined by one skilled in the art without undue experimentation. The forming of the dough in the shape of bars would have been obvious to one skilled in the art because brownies are commonly made in bar shape.

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Applicant further argues that Drantch teaches the dough must be manipulated or shaped by hand. The claims do not exclude shaping or manipulating by hand; obvious any dough to be formed must be shaped and manipulated by hand. The claims require that the dough can be directly baked after taking from the package and this is clearly taught by Drantch et al where they disclose "the present doughs are conveniently prepared into finished baked goods by simple addition to a suitable baking container or pan". Thus, any manipulation or shaping before packaging is irrelevant because the claims do not exclude shaping or manipulation before packaging. Obviously, the claimed dough has to be shaped and manipulated before packaging too or how else can the bar shape dough be obtained? Applicant argues Drantch is related to the preparation and baking of cookies which are generally prepared by spooning and dropping small portions of cookie dough; thus, there is no motivation to form the dough into a bar. This argument is not persuasive because Drantch et al also teach brownie and blondie doughs (see col. 6 lines 57-58) which are formed in shape of bar; furthermore, cookies are also known to form in shape of bar.

With respect to the Banks reference, applicant argues Banks teaches away by suggesting that manipulation of the cookie dough is required. The Banks reference is only relied upon for the teaching of adding the granular starch material to cookie dough and applicant does not argue why such addition would not have been obvious. Applicant further argues Drantch only teaches starch as included in its sugar but does not teach the separate inclusion or use of starch. It is recognized in the rejection that Drantch does not teach separate inclusion of starch; this is the reason why the Banks

reference is used. Banks teaches adding the starch and the amount used can be within the range claimed. Applicant argues Banks specifically teaches to limit the flow of the dough which teaches to prevent the dough from flowing to fill the bottom of the pan. Banks teaches to control the spread of the dough which means the dough is not overly spread, not that it does not spread at all. Banks et al teach a wide range; it would have been obvious to one skilled in the art to select an amount within such range to give an optimum texture, taste to the product. Such determination is not undue experimentation because it would have been well within the skill of one in the art to experiment with different amounts to find the optimum one. With respect to the Blaschke reference, applicant argues the Blaschke et al teach breaking into pieces before baking and the position taken in the office action to bake the entire block is based on improper hindsight reconstruction. This argument is not persuasive. The Blaschke reference is only relied upon to show the different dough composite, decoration and filling. Applicant does not argue why it would not have been obvious to one skilled in the art to do the dough composite in accordance with the teaching of Blaschke. The fact that the Balschke dough has groove does not in any way teach one skilled in the art not form the composite dough or dough with filling and decoration. The claims do not exclude the groove; furthermore, the Blaschke reference is not relied upon for the teaching of place-and-bake dough because Drantch et al already teach such concept.

Applicant also submits a 132 declaration; however, the declaration does not any comparative showing or testing to show the non-obviousness of the claimed method and product. The declaration essentially makes the same argument as in the remark

and the argument is not persuasive for the same reason set forth above. There is not comparative showing or testing to support the argument. For example, the declaration states cookies are not generally baked in blocks because a large block of cookies will not have the desired dual texture of crispness on the outer edges and chewiness in the center. Drantch also teaches brownie; furthermore, there is no evidence in the declaration to show that cookies are not baked in blocks. One can go in a bakery and see cookie bar and cookies bar are taught in cookbook. The declaration states a series of opinion; however, opinion is not equated to evidence and is not persuasive to show that the claimed method and product is not obvious in view of the teaching of the prior art.

The addition of the new reference is necessitated by amendment.

Applicant's arguments filed 2/3/06 have been fully considered but they are not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 16, 2006


LIEN TRAN
PRIMARY EXAMINER

Group 1707